

Acting or secondment at a higher classification – conversion checklist

Review the status of an employee acting or seconded to a higher classification level under the Public Sector Act 2022 (the Act) and Review of acting or secondment at higher classification level (Directive 03/23).

Purpose

Use this checklist to assist you as a public sector entity to meet obligations to review the status of an employee acting at, or seconded to, a higher classification level under the *Public Sector Act 2022* (the Act) and the [Review of acting or secondment at higher classification level \(Directive 03/23\)](#) (the directive).

You should consider:

- if the employee is employed in the entity in which they are acting at, or seconded to, a higher classification level
- if the employee has been acting at, or seconded to, a higher classification level for a continuous period of at least one year
- if the employee is considered suitable to perform the role
- the genuine operational requirements of the public sector entity.

The employee must not be a public sector employee who is employed on a casual basis, or a non-industrial instrument employee (such as a senior officer, a senior executive, or chief executive), or an employee who is acting in, or seconded to, a position that is ordinarily held by a non-industrial instrument employee.

You must also consider any previous review decisions and ensure any decision is [compatible with human rights](#).

Step 1 – eligibility for review

To be eligible for review, the employee must be an employee in the public sector entity in which they are acting at, or seconded to, a higher classification level. They must also have been acting at, or seconded to, the higher classification level for a continuous period of at least one year. Clause 8 of the directive sets out the meaning of continuous period.

<p>1.1 Is the employee a public sector employee who is currently acting at, or seconded to, a higher classification level?</p>	<p>Yes Go to 1.2</p>	<p>No The employee is not eligible for review because they are not currently acting in, or seconded to, a higher classification level.</p>
<p>1.2 Is the role at the higher classification level within the same public sector entity in which the employee is employed?</p> <p>Note: secondments between public sector entities do not meet the conditions of the Act.</p>	<p>Yes Go to 1.3</p>	<p>No The employee is not eligible for review because the role at the higher classification level is not in the same entity in which the employee is substantively employed.</p>
<p>1.3 Has the employee requested appointment to the higher classification level under section 120 of the Act, in relation to the same continuous period (e.g. the end of one year of acting or secondment, or the end of a subsequent year)?</p>	<p>No Go to 1.4</p>	<p>Yes Go to 1.3a</p>
<p>1.3a Is the employee requesting an additional review due to the role recently becoming substantively vacant and is the request being made within three months after the position became vacant?</p> <p>OR</p> <p>Is the employee requesting an additional review because they consider that they have become suitable to perform the role (in circumstances where a decision was previously made not to convert the employee because they were considered not suitable to perform the role) and is the request being made within three</p>	<p>Yes Go to 1.4</p> <p>Yes Go to 1.4</p>	<p>No The employee is not eligible for review because they have already exercised their entitlement to make a request under section 120 of the Act in relation to this continuous period and they do not meet the requirements for requesting an additional request for review.</p> <p>No The employee is not eligible for review because they have already exercised their entitlement to make a request under section 120 of the Act in relation to this continuous period and they do not</p>

<p>months after the employee first considers they may have become suitable to perform the role?</p> <p>OR</p> <p>Is the employee requesting an additional review in circumstances where the chief executive made a deemed decision (under section 120(6) of the Act) and where they have not appealed against the decision under section 130 of the Act.</p>	<p>Yes</p> <p>Go to 1.4</p>	<p>meet the requirements for requesting an additional request for review.</p> <p>No</p> <p>The employee is not eligible for review because they have already exercised their entitlement to make a request under section 120 of the Act in relation to this continuous period and they do not meet the requirements for requesting an additional request for review.</p>
<p>1.4 Has the employee been engaged at the higher classification for a continuous period of at least one year?</p> <p>Clause 8 of the directive provides for the meaning of continuous period, inclusive of the following relevant factors:</p> <ul style="list-style-type: none"> • unbroken engagement at the higher classification level in the same role*, in the same public sector entity • periods of authorised leave, or absence • remuneration at the full rate of the higher classification level during the unbroken engagement. <p>*Refer to Higher Duties FAQ's for guidance on 'same role'.</p>	<p>Yes</p> <p>Go to step 2</p>	<p>No</p> <p>The employee is not eligible for review because they have not been acting at, or seconded to, a higher classification level for a continuous period of at least one year.</p>

Step 2 – suitable to perform the role

To be permanently employed in the position at the higher classification level on a permanent basis, the chief executive must determine whether the employee is suitable to perform the role (as per the meaning provided for in clause 9 of the directive). There is no comparative assessment for this step against other employees. Being suitable to perform the role is the required consideration.

<p>2.1 Has the employee provided evidence of possessing any relevant mandatory qualification/s (as provided for in the role description)?</p>	<p>Yes</p> <p>Not relevant – there are no mandatory qualifications</p> <p>Go to 2.2</p>	<p>No</p> <p>The employee is unable to be employed in the position at the higher classification level on a permanent basis because they are not considered to be suitable to perform the role. Use the template letter declining conversion.</p> <p>Not considered suitable to perform the role, go to step 4.</p> <p>The notice of decision must include reasons for not converting and the information relied on in making that decision.</p>
<p>2.2 Does the employee meet any relevant mandatory condition/s of the role (as provided for in the role description)?</p>	<p>Yes</p> <p>Not relevant – there are no mandatory qualifications</p> <p>Go to 2.3</p>	<p>No</p> <p>The employee is unable to be employed in the position at the higher classification level on a permanent basis because they are not considered to be suitable to perform the role. Use the template letter declining conversion.</p> <p>Not considered suitable to perform the role, go to step 4.</p> <p>The notice of decision must include reasons for not converting and the information relied on in making that decision.</p>
<p>2.3 Is the employee currently the subject of a formal and unresolved performance improvement or discipline process?</p>	<p>No</p> <p>Go to 2.4</p>	<p>Yes</p> <p>The employee is unable to be employed in the position at the higher classification level on a permanent basis because they are not considered to be suitable to perform the role. Use the template letter declining conversion.</p> <p>Not considered suitable to perform the role, go to step 4.</p> <p>The notice of decision must include reasons for not converting and the information relied on in making that decision.</p>
<p>2.4 Is the employee currently the subject of any unresolved conduct or performance concerns?</p>	<p>No</p> <p>Considered suitable to perform the role, go to step 3.</p>	<p>Yes</p> <p>Go to 2.5</p>

<p>2.5 Have the unresolved conduct or performance concerns been raised with the employee in writing and, where relevant, managed in accordance with a relevant directive*?</p> <p>*For example, the directive relating to positive performance management or discipline.</p>	<p>No</p> <p>As the unresolved conduct or performance concerns have not been raised in writing and where relevant, managed in accordance with a relevant directive, the decision maker cannot rely on the requirement to be suitable to perform the role to refuse conversion for the employee.</p> <p>Considered suitable to perform the role, go to step 3.</p>	<p>Yes</p> <p>The employee is unable to be employed in the position at the higher classification level on a permanent basis because they are not considered to be suitable to perform the role. Use the template letter declining conversion.</p> <p>Not considered suitable to perform the role, go to step 4.</p> <p>The notice of decision must include reasons for not converting and the information relied on in making that decision.</p>
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Step 3 – considering whether to permanently employ the employee in the higher classification level

In making a decision, the decision maker must have regard to the genuine operational requirements of the public sector and reasons for decisions previously made (if any)—see section 120(4) of the Act.

The decision maker may consider the information in the following table when deciding whether there may be genuine operational requirements not to employ the employee in the position at the higher classification level on a permanent basis.

When deciding the request, the decision maker must also have regard to the reasons for each decision previously made, or deemed to have been made, in relation to the employee during their continuous period of acting at, or being seconded to, the higher classification level under section 120 of the Act.

<p>3.1 Have any previous reviews been conducted under section 120 of the <i>Public Sector Act 2022</i>?</p>	<p>Yes</p> <p>Include details of the consideration of previous review decisions under section 120 of the Act in the decision letter.</p> <p>Go to 3.2</p>	<p>No</p> <p>Go to 3.2</p>
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<p>3.2 Is the employee engaged to fill a temporary need arising because another employee is absent for a known period? Examples of absences for a known period include approved leave (including parental leave) and secondment.</p>	<p>Yes Go to 3.3</p>	<p>No Go to 3.3</p>
<p>3.3 Is the employee predominantly required to perform work necessary to meet an unexpected short-term increase in workload? For example, has the employee been engaged to meet an unexpected increase in workload for disaster management and recovery?</p>	<p>Yes Go to 3.4</p>	<p>No Go to 3.4</p>
<p>3.4 Is the employee engaged to perform work for a particular project or purpose that has a known end date?</p>	<p>Yes Go to 3.5</p>	<p>No Go to 3.5</p>
<p>3.5 Are there any other genuine operational requirements that are relevant to the decision about employing the employee permanently to the higher classification role?</p>	<p>Yes Go to 3.6</p>	<p>No Go to 3.6</p>
<p>3.6 Considering your answers to questions 3.2 to 3.5 and any other relevant factors, do the genuine operational requirements of the entity support employment of the employee in the position at the higher classification on a permanent basis?</p>	<p>Yes</p> <p>The genuine operational requirements of the entity support employment of the employee permanently to the position at the higher classification level.</p> <p>Use the template letter approving conversion.</p> <p>Ensure consideration of previous review decisions (3.1) are reflected in decision letter.</p>	<p>No</p> <p>The genuine operational requirements of the entity do not support employment of the employee permanently to the position at the higher classification level at this time.</p> <p>Use the template letter declining conversion.</p> <p>Ensure consideration of previous review decisions (3.1) are reflected in decision letter.</p> <p>Go to step 4</p>

Step 4 – human rights assessment

Under the *Human Rights Act 2019* (HR Act), decision makers must act and make decisions in a way that is compatible with human rights, and when making a decision under this directive, to give proper consideration to human rights. Where a decision maker decides not to appoint an employee to the higher classification level, a human rights assessment should be undertaken and documented in accordance with the HR Act. Additional information and guidance can be found at [human rights resources](#).